

employed in the seasonal industry of storing grain in country grain elevators, public terminal and sub-terminal elevators, wheat flour mills, nonelevator bulk storing establishments and flat warehouses, § 526.10(b)(14) of this chapter.

Subpart I—Employment in Ginning of Cotton and Processing of Sugar Beets, Sugar-Beet Molasses, Sugarcane, or Maple Sap into Sugar or Syrup; Exemption From Overtime Pay Requirements Under Section 13(b)(15)

INTRODUCTORY

§ 780.800 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart I constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(15) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for two industries (a) for employees engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and (b) for employees engaged in the processing of sugar beets, sugar-beet molasses, sugarcane or maple sap, into sugar (other than refined sugar) or syrup. The limited overtime exemptions provided for cotton ginning and for sugar processing under sections 7(c) and 7(d) (see part 526 of this chapter) are not discussed in this subpart.

§ 780.801 Statutory provisions.

Section 13(b)(15) of the Fair Labor Standards Act exempts from the overtime requirements of section 7:

Any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup.

Section 13(b)(15) supplants two exemptions that were contained in the Act prior to the Fair Labor Standards

Amendments of 1966. The first is former section 13(a)(18), having identical language, which provided a complete exemption for those employed in the ginning of cotton. The second is the former section 7(c) which provided an overtime exemption for the employees of an employer engaged in sugar processing operations resulting in unrefined sugar or syrup.

§ 780.802 What determines application of the exemption.

It is apparent from the language of section 13(b)(15) that the application of this exemption depends upon the nature and purpose of the work performed by the individual employee for whom exemption is sought, and in the case of ginning of cotton on the location of the place of employment where the work is done and other factors as well. It does not depend upon the character of the business of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employees of the employer may be exempt while others may not.

§ 780.803 Basic conditions of exemption; first part, ginning of cotton.

Under the first part of section 13(b)(15) of the Act, the ginning of cotton, all the following conditions must be met in order for the exemption to apply to an employee:

- (a) He must be "engaged in ginning."
- (b) The commodity ginned must be cotton.
- (c) The ginning of the cotton must be "for market."
- (d) The place of employment in which this work is done must be "located in a county where cotton is grown in commercial quantities." The following sections discuss the meaning and application of these requirements.

GINNING OF COTTON FOR MARKET

§ 780.804 "Ginning" of cotton.

The term "ginning" refers to operations performed on "seed cotton" to separate the seeds from the spinnable fibers. (*Moore v. Farmer's Manufacturing and Ginning Co.*, 51 Ariz., 378, 77 F. 2d 209; *Frazier v. Stone*, 171 Miss. 56, 156 So.

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596). “Seed cotton” is cotton in its natural state (*Burchfield v. Tanner*, 142 Tex. 404, 178 S.W. 2d 681, 683) and the ginning to which section 13(b)(15) refers is the “first processing” of this agricultural commodity (107 Cong. Rec. (daily ed.) p. 5887), which converts it into the marketable product commonly known as “lint cotton” (*Wirtz v. Southern Pickery Inc.* (W.D. Tenn.) 278 F. Supp. 729; *Mangan v. State*, 76 Ala. 60, 66) by removing the seed from the lint and then pressing and wrapping the lint into bales.

§ 780.805 Ginning of “cotton.”

Only the ginning of “cotton” is within the first part of the exemption. An employee engaged in ginning of moss, for example, would not be exempt. The reconditioning of cotton waste resulting from spinning or oil mill operations is not included, since such waste is not the agricultural commodity in its natural state for whose first processing the exemption was provided. (See 107 Cong. Rec. (daily ed.) p. 5887.) The “cotton,” “seed cotton,” and “lint cotton” ginned by ordinary gins do not include “linter” or “Grabbot” cotton, obtained by reginning cotton seed and hard locks of cotton mixed with hulls, bolls, and other substances which could not be removed by ordinary ginning (*Mississippi Levee Com’rs v. Refuge Cotton Oil Co.*, 91 Miss. 480, 44 So. 828, 829). Mote ginning, the process whereby raw motes (leaves, trash, sticks, dirt, and immature cotton with some cottonseed) are run through a ginning process to extract the short-fiber cotton, is not included in the ginning of cotton unless it is done as a part of the whole ginning process in one gin establishment as a continuous and uninterrupted series of operations resulting in useful cotton products including the regular “gin” bales, the “mote” bales (short-fiber cotton), and the cottonseed.

§ 780.806 Exempt ginning limited to first processing.

As indicated in § 780.804, the ginning for which the exemption is intended is the first processing of the agricultural commodity, cotton, in its natural form, into lint cotton for market. It does not include further operations

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which may be performed on the cottonseed or the cotton lint, even though such operations are performed in the same establishment where the ginning is done. Delinting, which is the removal of short fibers and fuzz from cottonseed, is not exempt under section 13(b)(15). It is not first processing of the seed cotton; rather, it is performed on cottonseed, usually in cottonseed processing establishments, and even if regarded as ginning (*Mitchell v. Burgess*, 239 F. 2d 484) it is not the ginning of cotton for market contemplated by section 13(b)(15). It may come within the overtime exemption provided in section 7(d) of the Act for certain seasonal industries. (See § 526.11(b)(1) of part 526 of this chapter.) Compressing of cotton, which is the pressing of bales into higher density bales than those which come from the gin, is a further processing of the cotton entirely removed from ginning (*Peacock v. Lubbock Compress Co.*, 252 F. 2d 892). Employees engaged in compressing may, however, be subject to exemption from overtime pay under section 7(c). (See § 526.10(b)(8) of this chapter.)

§ 780.807 Cotton must be ginned “for market.”

As noted in § 780.804, it is ginning of seed cotton which converts the cotton to marketable form. Section 13(b)(15), however, provides an exemption only where the cotton is actually ginned “for market.” (*Wirtz v. Southern Pickery, Inc.* (W.D. Tenn.) 278 F. Supp. 729.) The ginning of cotton for some other purpose is not exempt work. Cotton is not ginned “for market” if it is not to be marketed in the form in which the ginning operation leaves it. Cotton is not ginned “for market” if it is being ginned preliminary to further processing operations to be performed on the cotton by the same employer before marketing the commodity in an altered form. (Compare *Mitchell v. Park* (D. Minn.), 14 WH Cases 43, 36 Labor Cases 65, 191; *Bush v. Wilson & Co.*, 157 Kans. 82, 138 P. 2d 457; *Gaskin v. Clell Coleman & Sons*, 2 WH Cases 977.)